

**Remarks:**

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. Claim 191 is currently amended. Claims 1-147, 149-151, 156, 168, 170-178, and 180-186, and 192 have previously been cancelled. No new claims have been added. No new matter has been added. Accordingly, Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-191, 193-197, 201-203, and 205-218 (49 claims) will be pending in the present application upon entry of this reply and amendment.

A detailed listing of all the claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

**Claim Rejections – 35 U.S.C. §112**

On page 2, para. 3 of the Final Office Action, the Examiner has rejected Claim 191 under 35 U.S.C. §112, second paragraph as being indefinite. The Examiner states that it is not clear as to what portion of the sheet of web material would be considered "most distal from the first panel" especially since the hood and the panels of the bag are all made from a single sheet of web material. The Examiner also states that "it is not clear as to which portion of said 'skirt structure' is being referred to ..." and further that the limitation "the backing strip having a lower portion" does not define what point of the backing strip can be considered a lower portion.

In response, the Applicants have amended Claim 191. For the Examiner's edification, below is a copy of amended Claim 191 that shows what has been deleted (crossed out) and what has been added (underlined). Applicants have also added the element numbers identifying the limitations referenced in amended Claim 191. Support for the amendment can be found at least in Figures 43-45, and pages 45, lines 4-35 to page 47, lines 1-10 of the Specification as originally filed.

191. (Currently Amended) A reclosable bag as defined in Claim 190, further comprising, wherein ~~the~~ a lower portion 322 of the backing strip 320 extends below said lower portion 342 of said inside surface 17 of said skirt structure 16 and an upper portion 324 is adhesively joined to said inside surface 17 of said skirt structure 16, the skirt structure 16 having one portion of its lower portion 342 coupled to said sheet of web material 10 ~~of said hood 11~~ most distal from said first panel 35, the backing strip 320 also having a the lower portion 322 coupled to said second panel 36 of the sheet of web material 10.

It is clear from reviewing the drawings and the cited text that one ordinarily skilled in the art would reasonably understand what is claimed.

Accordingly, Claim 191, as amended, is definite and in compliance with 35 U.S.C. §112, para. 2. Applicants respectfully request withdrawal of the rejection of Claim 191 under 35 U.S.C. §112, para. 2.

The Applicants note that the claim amendment described above and intended to clarify the language using the amended claim, and is no way intended as limiting or to obtain patentability of such claim. Accordingly, it is believed by the Applicants that the amendment made to the claim in no ways impairs the ability of the Applicants to obtain full scope of such claim as may be available under the Doctrine of Equivalents.

#### Claim Rejections - 35 U.S.C. §103

On pages 3-7 of the Final Office Action, the Examiner reiterates his rejections of all the pending claims as recited in his July 8, 2008 Office Action without additional comment other than with respect to dependent Claim 191. With respect to Claim 191, the Examiner cites the prior art previously cited in commenting on the Applicants' amendments made to dependent Claim 191 in the October 8, 2009 Response.

Applicants submit that Claim 191, as amended, as recited above is in compliance

with 35 U.S.C. §112, para. 2 and that the art cited by the Examiner does not read on dependent Claim 191. Applicants note that Claim 191 depends from independent Claim 187 which applicants believe is patentable over the cited prior art. Accordingly, Claim 191 is also patentable under 35 U.S.C. §112, para. 4

The prior art, such as Malin and Buchman et al. have separate hoods and are silent in teaching that a hood and the bag are made from a single sheet of web material as required in each of the independent claims of the present application.

Each independent claim (Claims 148, 169, 179, 187, 212, and 214) of the present application include limitations that are not disclosed, taught or suggested in the combination required in each of the claims of the present application.

By reiterating the rejections of the claims for the reasons given in the previous Office Action mailed July 8, 2009, the Applicants submit that the Examiner admits that the principal prior art, Buchman et al., does not disclose several limitations required in the present application.

Specifically, the Examiner admits that Buchman fails to disclose:

1. "Buchman et al. are silent in teaching areas of structural weakness located intermediate said fold in said first and second ends of said hood." (See 07/08/09 Office Action, pg. 4, lines 8-9).
2. "Buchman et al. are silent in teaching wherein the hood and the bag are made from a single sheet of web material." (See 07/08/09 Office Action, pg. 5, lines 6-7).
3. "Claims 148, 169, 179, 187, 212, and 214 further differ from the combination in reciting wherein the distal portion of the skirt is coupled to a backing strip and wherein said backing strip is coupled to said sheet of web material." (See 07/08/09 Office Action, pg. 7, lines 13-15). (Note: The cited claims are the independent claims of the present application.)
4. "Regarding Claims 154, 205, 206, and 210, Buchman et al. are silent

in explicitly teaching wherein the inside surface of the skirt includes predetermined area having a releasable adhesive material thereon." (See 07/08/09 Office Action, pg. 8, lines 18-20).

Applicants submit that since Buchman does not have at least the above-admitted limitations, one ordinarily skilled in the art of providing a resealable bag for filling with food product and methods would not be compelled to look to Buchman in the first instant. The Supreme Court, in the KSR case, requires that the Examiner must determine whether there was an apparent reason to combine the known elements in the fashion claimed in the parent application. Further that analysis must be explicit. The Examiner merely states that the combination asserted is a "matter of design choice." That is NOT a reason nor an analysis for combining the elements identified by the Examiner to obtain that which is disclosed and claimed in the present application.

Applicants submit that the Examiner's suggestion to make the combination of the multiple references as identified by the Examiner, has been taken from the Applicants' own Specification (using hindsight), which is improper.

Each independent claim (Claims 148, 169, 179, 187, 212, and 214) of the present application include limitations that are not disclosed, taught or suggested in the combination required in each of the claims of the present application. The limitations include, among other elements:

- a single sheet of web material 10, including a hood 11 (Figs. 1, 3, 4, 42-45, and 59).

- first and second areas of structural weakness 12.

- the hood defines a top of the bag.

- interlockable tracks of a reclosable fastener 20 structure extending into the hood toward the top of the reusable bag above said areas of structural weakness.

- a backing strip extending below the lower portion of the inside surface of

the skirt structures and adhesively joined to the inside surface of said skirt structure.

the skirt structure is coupled to the sheet of web material of the hood and to one of the panels of the sheet of web material comprising the resealable bag.

Buchman clearly shows that the hood 60 in his disclosure is a separate piece of material and not formed with the bag from a single sheet of web material as required by each of the independent claims of the present application. The Examiner provides NO reason why Buchman et al. should be or could be changed as required by Graham or KSR.

As the Examiner has acknowledged on page 3, para. 5 of the current Final Office Action, the Examiner is expected to make the factual determination set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966), and to provide a reason why each one having an ordinary skill in the pertinent art would have been lead to modify the prior art or to combine prior art references to arrive at the claimed invention. Recently, the Supreme Court weighted in on the issue of obviousness and noted that the analysis supporting a rejection under 35 U.S.C. §103(a) should be made explicit, and that it was "important to identify a reason that would have prompted a person of ordinary skills in the relevant field to combine the [prior art] elements" in the matter claimed. The Court specifically stated:

Often it will be necessary ... to look to interrelated teachings of multiple patents; effects of demands known in the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an **apparent reason** to combine the known elements in the fashion claimed. To facilitate review, this analysis **should be made explicit**.

KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 127 S. Ct. 1727 (2007).

Therefore, in formulating rejection under 35 U.S.C. §103(a) based upon a combination of prior art elements, it remains necessary to explicitly identify the reason why a person of ordinary skill in the art would have combined the prior art elements in

the manner claimed. Notably, the January 14, 2010 as well as the July 8, 2009 Office Actions have no such finding justifying the combination of Buchman et al. with the multiple other references to obtain that which is disclosed and claimed in the present application. As reiterated above, the Examiner admits that Buchman et al. failed to disclosed at least four (4) elements required in the claims of the present application. Further, as cited above, Applicants point out elements in each of the independent claims of the present application that are not taught in any reasonable combination of the cited prior art.

The Applicants submit that the Examiner has not made the analysis required by the Supreme Court in KSR; rather, that the Examiner's arguments, particularly in the Response To Arguments section of the present Final Office Action, pgs. 7-12 that the absence of several elements of the claimed invention in the Buchman et al. reference make it obvious to add the elements since they are "incorrectly" alleged to be found in the unrelated references, mainly Stolmeier et al., McMahon, Malin, May, Weeks, Belmont, Tilman, Provan, Hayashi, and Thomas. The Examiner has merely "cherry picked" individual elements from the cited prior art in an attempt to assert obviousness of that which is disclosed and claimed in the present application. The fact that the principal cited prior Buchman et al., does not teach that the hood and bag are from a single piece of web material flies in the face of a reasonable analysis and assertion of *prima facie* obviousness on the part of the Examiner. The Examiner has merely identified elements in the cited prior art that would require a modification to Buchman et al. which in effect would reconstruct Buchman et al. and eliminate features of Buchman et al. that are pertinent to the claims of Buchman et al. This is clearly not the analysis required by KSR; there is neither the explicit analysis required by KSR nor the identification of apparent reasons to make the combination suggested by the Examiner. Neither the current Final Office Action nor the July 8, 2009 Office Action provide any reasons or factual basis that one skilled in the art would not only modify, but completely reconstruct

and redesign the Buchman et al. reference to attempt to arrive at the claimed invention of the present application. Establishing such factual basis is required by well-settled case law (at least the Graham case and the KSR case).

Applicants reiterate their arguments and comments to the Examiner's rejections as set forth in the Applicants' October 8, 2009 Amendment filed in the present case.

Applicants submit that the Examiner is relying on hindsight to make the above obviousness rejection of the cited claims under 35 U.S.C. § 103(a). In other words, the Examiner is merely using the present application, searching the words of the various elements cited in each of the claims of the present application to find pieces of prior art that recite such same elements. However, the Examiner has not provided why one ordinarily skilled in the art without having the benefit of the present application in front of him, would select the same elements identified in the at least eleven (11) pieces of prior art used by the Examiner in the present Final Office Action (and the July 8, 2009 Office Action).

Applicants believe that the Examiner is basing the rejections under 35 U.S.C. § 103(a) on the mere identification in the prior art of individual components of claimed limitations in the present application. The Examiner has not made particular findings as to the reason a skilled artisan, with no knowledge of the claimed invention, would have selected the components for a combination in the matter claimed in the present application.

Applicants submit that all the words in the claim must be considered in judging the patentability of a claim against the prior art. See MPEP § 2143.03. Further, since the Examiner has to rely on elements from eleven different prior art documents (Buchman, Stolmeier, McMahon, Belmont, Weeks, Provan, May, Malin, Tilman, Hayashi, Thomas), it does not render the claims of the present application *prima facie* obvious. See MPEP § 2143.01 VI.

A reclosable food bag recited in each of the independent claims of the present

application, considered as a whole, would not have been obvious in view of Buchman and/or the other pieces of prior art. The rejection of independents Claims 148, 169, 179, 187, 212, and 214 over Buchman in view of the other prior art references under 35 U.S.C. § 103(a) is improper. Therefore, Claims 148, 169, 179, 187, 212, and 214 are patentable.

Dependent Claims 152-155, 157- 160, 164-166, and 216 which depend from independent Claim 148; dependent Claim 217 which depends from independent Claim 169; dependent Claim 218 which depends from independent Claim 179; dependent Claims 188-191, 193-211 which dependent from independent Claim 187; dependent Claim 213 which depends from independent Claim 212, and dependent Claim 215 which depends from independent Claim 214, are also patentable. See 35 U.S.C. § 112, para. 4. The Applicants respectfully request withdrawal of the rejection of Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, and 205-218 under 35 U.S.C. § 103(a).

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It is submitted that each outstanding rejection to the application has been overcome, and that the application is in a condition for allowance. The Applicant respectfully requests consideration and allowance of all the pending claims.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted:

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Page 25

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